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# Macik v. State Appellant's Brief Dckt. 40321

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IN THE SUPREME COURT OF THE STATE OF IDAHO

RONALD LEE MACIK,	)	
	)	NO. 40321
Petitioner-Appellant,	)	
	)	ADA COUNTY NO. CV 2012 13953
v.	)	
	)	
STATE OF IDAHO,	)	APPELLANT'S BRIEF
	)	
Respondent.	)	
_____	)	

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BRIEF OF APPELLANT

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APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF ADA

HONORABLE CHERI C. COPSEY  
District Judge

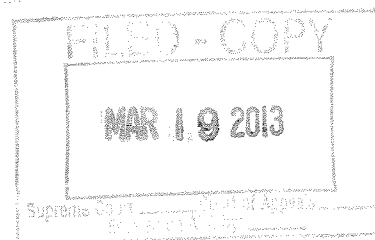
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## STATEMENT OF THE CASE

### Nature of the Case

Ronald Lee Macik appeals from the District Court's order summarily dismissing his petition for post-conviction relief. On appeal, Mr. Macik argues that the district court erred when it summarily dismissed his post-conviction action without providing him twenty days to respond to the State's motion to dismiss.

### Statement of the Facts and Course of Proceedings

Mr. Macik pleaded guilty to first degree murder in 1972. (R., p.21.) On September 14, 1972, the district court imposed a life sentence. (R., p.21.) On July 26, 2012, Mr. Macik filed a Petition and Affidavit for Post-Conviction Relief with the district court. (R., pp.3-9.) Mr. Macik also moved the district court for the appointment of counsel to represent him in his post-conviction proceedings, which was denied by the district court. (R., pp.10-13, 21-24.) On August 22, 2012, the State filed a motion for summary dismissal of Mr. Macik's post-conviction petition based, in part, on the grounds that the petition was untimely. (R., pp.26-27.) Five days later, on August 27, 2012, the district court entered an order dismissing Mr. Macik's post-conviction petition based, in part, on the grounds that the petition was untimely. (R, pp.29-31.) Thereafter, the district court entered a final judgment, from which Mr. Macik timely appealed. (R., pp.38-43.)

## ISSUE

Did the district court err when it dismissed Mr. Macik's post-conviction petition without providing him twenty days to respond to the State's motion to dismiss?

## ARGUMENT

### The District Court Erred When It Dismissed Mr. Macik's Post-Conviction Petition Without Providing Him Twenty Days To Respond To The State's Motion To Dismiss

Pursuant to Idaho Code Section 19-4906(b), the district court may dismiss a post-conviction applicant's petition "if the court provides the applicant with notice of its intent to do so, the ground or grounds upon which the claim is to be dismissed, and twenty days for the applicant to respond." *Buss v. State*, 147 Idaho 514, 517 (Ct. App. 2009). Pursuant to Idaho Code Section 19-4906(c), a district court can also dismiss a post-conviction petition upon the State's motion for summary judgment. *Id.* "When a district court summarily dismisses a post-conviction application relying in part on the same grounds presented by the state in its motion for summary dismissal, the notice requirement has been met. *Id.* However, after "the state files a subsection (c) motion, a petitioner is still entitled to twenty days to respond, so as to afford an opportunity to establish a material fact issue." *Saykhamchone v. State*, 127 Idaho 319, 322 (1995).

In this case, the State filed its motion for summary judgment on August 22, 2012, and, five days later, the district court entered its order dismissing Mr. Macik's petition. (R., pp.26-27, 29-31.) As such, the district court erred because it failed to provide Mr. Macik the full twenty days to respond to the State's motion to dismiss, which is required under *Saykhamchone*. In the process, Mr. Macik lost his opportunity to present facts which would establish the timeliness of his post-conviction petition or facts to justify equitable tolling of the statute of limitations contained in I.C. § 49-4902. See *Schultz v. State*, 151 Idaho 383, 385-386 (Ct. App. 2011) (holding that the doctrine of equitable tolling is applicable to an untimely post-conviction petition when the petitioner

can establish that his/her due process rights were violated because s/he was denied a meaningful opportunity to present post-conviction claims).

Mr. Macik's petition does assert facts which, with further development, could establish a justification for equitable tolling. In *Abbot v. State*, 129 Idaho 381 (Ct. App. 1996), the Idaho Court of Appeals held that the statute of limitations for a post-conviction relief action may be tolled where the applicant was prevented from timely filing his action by incapacitating mental illness or the effects of psychotropic medication. In his petition, Mr. Macik asserted that he was "committed to the Idaho State Prison on October 1st 1969 and immediately placed on a powerful mind altering drug 'Thorazine,'" which rendered him "incapable of any rational thought . . . ." (R., p.8.) While those facts alone would not necessarily establish a justification for equitable tolling, if provided the opportunity, Mr. Macik could have established that his mental incapacity persisted to the date he filed his post-conviction petition. See *Anderson v. State*, 133 Idaho 788, 792 (Ct. App. 1999) (holding that a post-conviction petitioner need not assert mental incompetence in the petition to establish a justification for equitable tolling because equitable tolling is an affirmative defense as opposed to an element of a claim for relief).

In sum, the district court erred when it failed to provide Mr. Macik twenty days to respond to the State's motion for summary dismissal.



CONCLUSION

Mr. Macik respectfully requests that this Court vacate the district court's order summarily dismissing his post-conviction action and remand this case to the district court for further proceedings.

DATED this 19<sup>th</sup> day of March, 2013.

A handwritten signature in black ink, appearing to read 'Shawn F. Wilkerson', is written over a horizontal line.

SHAWN F. WILKERSON  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

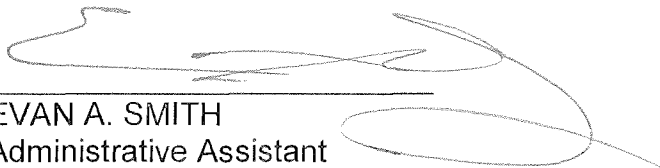
I HEREBY CERTIFY that on this 19<sup>th</sup> day of March, 2013, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

RONALD L MACIK  
INMATE #12680  
ICC  
PO BOX 70010  
BOISE ID 83707

CHERI C COPSEY  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

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Hand delivered to Attorney General's mailbox at Supreme Court.

  
\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

SFW/tmf